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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,836	01/23/2002	Richard J. Olson	S63.2-10059	7864

490 7590 08/16/2004

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

NGUYEN, VI X

ART UNIT PAPER NUMBER

3731

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/055,836

**Applicant(s)**OLSON, RICHARD J. *CR***Examiner**

Victor X Nguyen

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23, 27 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23, 27 and 29-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2002, 2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 1-22 drawn to non-elected invention. In 04/30/2004, applicant elected to prosecute Group II, Species II. Furthermore, it was stated that all claims 23, 25-27 and 29-43 read upon the elected species. However, claims 25-26 and 43 do not read upon the elected species. Therefore, non-elected claims 25-26 and 43 are withdrawn from further consideration.

The requirement is deemed proper and is therefore made **Final**.

### ***Claim Rejections - 35 USC § 112***

2. Claims 25-26 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 25-26 and 43 are rejected as being incomplete because they each depend from a cancelled or withdraw claim. Therefore, they have not been further analyzed on their merits.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23, 29-36 and 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by St. Germain et al (5,534,007).

St. Germain et al disclose in figs. 1-2 and 8, a stent delivery catheter system is used in PTCA procedures having the limitations of claims 23 and 29, including: a catheter (5) defines a guide wire lumen (15). A stent (35) is disposed about at least a portion of the distal region of the catheter, where the distal region of the catheter body and the stent define a first diameter region (30), a second diameter region (15) of the assembly, and where a removable loading tool (40) is disposed about at least a portion of the distal region of the catheter and at least a portion of the proximal region of the catheter, where the tool body has a hollow chamber (10), and where the chamber has an inner surface region (45) which defines a first portion containing the first diameter region (30) and where a second portion contains the second diameter region (see col. 3, lines 26-60), and where the first opening has a diameter sufficient to allow passage of the catheter assembly having the stent mounted thereon.

Regarding claims 30-32, St. Germain et al disclose the chamber defines a neck portion (62), and where the neck portion diameter is tapered from the inner diameter of the first portion to the inner diameter of the second portion (fig. 3, see col. 3, lines 44-47).

Regarding claims 33-36 and 38-39, St. Germain et al disclose the tool body (40) is constructed from at least one material of the group consisting of polymer (see col. 3, lines 39-41), and where the inner surface region (45) corresponds to at least the portion of the chamber comprising a polymer material

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27, 37 and 40-42 are rejected under 35 U.S.C. 103 (a) as being unpatentable over St. Germain et al (U.S. 5,534,007).

St. Germain is explained as before. Although, St. Germain does not disclose the stent comprises a coating which is drug. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the stent comprises a coating which is drug, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 40-41 are rejected under 35 U.S.C. 103 (a) as being unpatentable over St. Germain '007. St. Germain is silent regarding the inner diameter of the first portion of the inner surface region is about 0.5 mm to about 5 mm. Nevertheless, St. Germain does disclose an inner surface region, which must be changes in the size of a component involve merely routine skill in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make St. Germain's inner surface region has about 0.5 mm to about 5 mm. Furthermore, St. Germain is silent regarding the inner diameter of the second portion of the inner surface region is about 0.2 mm to about 4.9 mm. Nevertheless, St. Germain does disclose an inner surface region, which must be changes in the size of a component involve merely routine skill in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the

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time the invention was made to make St. Germain's inner surface region has about 0.2 mm to about 4.9 mm

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 4,733,665 to Palmaz U.S. Pat. No. 6,068,635 to Gianotti

U.S. Pat. No. 5,749,921 to Lenker

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn *VN*  
August 5, 2004

  
KEVIN T. TRUONG  
PRIMARY EXAMINER